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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 CARLOS VALENCIA-MACIAS,

15 Defendant.

CASE NO. 12CR0307-LAB

**ORDER GRANTING IN PART JOINT
APPLICATION FOR SENTENCE
REDUCTION PER U.S.S.G.
AMENDMENT 782; § 18 U.S.C. 3582**

16 The Court has reviewed the Joint Application for Sentence Reduction in this case and
17 is in general (but not complete) agreement with the parties' recommendation. Under
18 Amendment 782 to the United States Sentencing Guidelines ("Guidelines" or "USSG") and
19 18 U.S.C. § 3582(c)(2), the Court agrees with the parties that the Defendant is eligible for a
20 reduced sentence and that his revised Guideline range is 63-78 months. The parties have
21 recommended that the Court reduce the original sentence from 90 months to the low end of
22 the revised Guideline range, 63 months.

23 This case was tried to a jury. The Court has an independent recollection of the facts
24 and circumstances of the case, and has also reviewed its notes from the trial as well as the
25 original Presentence Report. Under 18 U.S.C. § 3553(a), several aggravating circumstances
26 bode against the degree of sentence reduction that the parties recommend.

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1 First, even by border district standards that are somewhat jaded, the defendant's
2 offense involved an enormous quantity of marijuana – over 1400 pounds. That differentiates
3 it from other marijuana importation cases, and makes this case more aggravated.

4 Second, the defendant compounded his drug smuggling offense by deliberately
5 perjuring himself at his trial. The evidence at trial established that drug agents saw two men
6 unloading marijuana from a panga boat on the beach around 2:00 AM. The agents ordered
7 the men to surrender, but both fled on foot down the beach. The agents eventually found the
8 defendant hiding among large rocks along the shoreline. At his trial, the defendant denied
9 that he was one of the people who had been unloading the marijuana. Instead, he testified
10 that he was jogging on the beach after midnight and became frightened when he saw a man
11 with a machine gun (presumably one of the agents). He ran away from the armed man and
12 hid in the rocks hoping to avoid danger. The jury obviously didn't believe this preposterous
13 yarn, and neither did the Court. At the defendant's sentencing, the Court found that the
14 defendant had willfully perjured himself and adjusted his sentencing range upward by two
15 levels for obstruction of justice. USSG § 3C1.1. Reflecting the aggravated nature of the
16 defendant's offense and his duplicity, the Court also imposed a 90-month sentence – near
17 the high end of his original Guidelines sentencing range of 78–97 months.

18 In ruling on a Joint Application to reduce sentence, the Court is required to consider
19 and discuss relevant § 3553(a) factors. *United States v. Trujillo*, 713 F.3d 1003, 1009 (9th
20 Cir. 2013). They include: the nature and circumstances of the offense and the history and
21 characteristics of the defendant; the purposes of sentencing; the kinds of sentences
22 available; the sentences and ranges established by the Sentencing Guidelines; relevant
23 policy statements issued by the Sentencing Commission; the need to avoid unwarranted
24 sentencing disparities among similarly situated defendants; and the need to provide
25 restitution to victims. The Court has considered all of these factors and, without "ticking off"
26 each one, concludes as follows:

27 Under § 3553(a)(1), the Court finds that the nature and circumstances of the
28 defendant's offense were aggravated. The offense involved a much larger quantity of

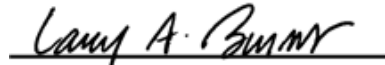
1 marijuana than is typical in marijuana importation cases in this district. What's more, the
 2 defendant compounded his original offense by deliberately testifying falsely at his trial. A
 3 sentence at the low end of the revised sentencing range would not adequately reflect either
 4 of these aggravating circumstances. Nor would a low end sentence provide just punishment
 5 for what, in effect, were two felonies committed by the defendant – importing drugs and
 6 perjury. USSG § 3553(a)(2)(A). Nor would a sentence at the low end of the revised
 7 Guidelines range deter others from participating in trafficking in large quantities of drugs, or
 8 from later lying under oath about their involvement. USSG § 3553(a)(2)(B).

9 The Court has also considered the kinds of sentences available and the need to avoid
 10 unwarranted sentencing disparities. A sentence of 78 months is within the revised
 11 Guidelines range authorized by Amendment 782. And based on the Court's judgment and
 12 experience, such a sentence is not disparate with sentences that the Court has imposed in
 13 similar cases, particularly those that also involve the obstruction of justice. The Court finds
 14 that the same aggravating factors that supported a sentence near the high end of the original
 15 Guideline range support a high end sentence under the revised Guideline range.¹

16 The Joint Application for Sentence Reduction is **GRANTED IN PART**; the Defendant's
 17 sentence is reduced from 90 months to 78 months.

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 19 **IT IS SO ORDERED.**

20 DATED: August 18, 2015

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22 **HONORABLE LARRY ALAN BURNS**
 23 United States District Judge

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 27 ¹ The Court acknowledges that it is not permitted to engage in a de novo resentencing in a
 28 § 3582(c)(2) proceeding, USSG. § 1B1.10(a)(3), p.s. ("[P]roceedings under § 3582(c)(2) and this
 policy statement do not constitute a full resentencing of the defendant."), and is not doing so here.
 Instead, the Court is merely reevaluating the relevant § 3553(a) factors, including the lower Guideline
 sentencing range, to determine the degree of sentence reduction that is warranted.